

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JACQUELINE S. ERDMAN**

Claimant

VS.

**CITY OF SALINA**

Self-Insured Respondent

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Docket No. 264,983

**ORDER**

Respondent appealed the December 23, 2003 Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on June 8, 2004.

**APPEARANCES**

Jan L. Fisher of Topeka, Kansas, appeared for claimant. Dustin J. Denning of Salina, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a May 30, 2000 accident. Claimant alleges she injured her left ankle in that accident, which caused an altered gait that resulted in injuries to the right knee and low back.

In the December 23, 2003 Award, Judge Moore determined claimant sprained her left ankle on May 30, 2000, which accelerated and aggravated the preexisting avascular necrosis in the talus of claimant's left foot. Moreover, the Judge concluded the left ankle injury created an altered gait, which caused right knee and low back complaints. Accordingly, the Judge held claimant sustained an additional 10 percent whole body functional impairment due to the May 30, 2000 accident and awarded claimant the following permanent partial general disability benefits for the following periods:

For the period from January 1, 2003, to February 1, 2003, a 77 percent work disability (a permanent partial general disability greater than the functional impairment rating); for the period from February 1, 2003, to May 24, 2003, a 63 percent work disability; for the period from May 24, 2003, to June 15, 2003, a 77 percent work disability; and for the period commencing June 15, 2003, a 39.5 percent work disability.

Respondent contends Judge Moore erred. Respondent argues the May 30, 2000 accident did not permanently aggravate or accelerate the preexisting avascular necrosis in claimant's left talus but, instead, caused only a temporary sprain. In short, respondent contends the May 30, 2000 ankle injury did nothing to accelerate or aggravate the preexisting avascular necrosis, and claimant's ongoing left ankle problems are the natural progression of the avascular necrosis disease process. In addition, respondent argues claimant's low back and right knee problems do not rise to the level of constituting an impairment. Consequently, respondent requests the Board to deny claimant's request for benefits. In the alternative, respondent asks the Board to limit claimant's award to one for a scheduled injury.

Conversely, claimant contends the Board should affirm the December 23, 2003 Award. Claimant argues her left ankle was asymptomatic until the May 30, 2000 accident, which accelerated the avascular necrosis in her left foot. Claimant also argues the evidence establishes the left ankle injury caused an altered gait, which caused low back and right knee symptoms and impairment.

The only issues before the Board on this appeal are:

1. Did claimant injure her left ankle on May 30, 2000, in an accident that arose out of and in the course of her employment with respondent?
2. If so, what is the nature and extent of claimant's injury and disability?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the December 23, 2003 Award entered by Judge Moore should be affirmed. In analyzing the evidence and the applicable law, Judge Moore made detailed findings and conclusions, which the Board adopts as its own.

In summary, the Board finds and concludes that claimant injured her left ankle on May 30, 2000, while she was working for respondent painting a curb. Although she did not know it at that time, the head of the talus in claimant's left foot was dying due to avascular necrosis, which the medical experts agreed was caused by a 1997 fracture to the neck of

the talus. Claimant's testimony is uncontradicted that her symptoms resolved following the 1997 talus fracture and that her left ankle was asymptomatic before the May 30, 2000 accident.

Both Dr. Milo G. Sloo, III, the board-certified orthopedic surgeon who treated claimant for the 1997 fracture, and Dr. Alan L. Kruckemyer, the board-certified orthopedic surgeon who treated claimant following the May 2000 accident, testified that rolling the left ankle, as claimant did on May 30, 2000, was the type of injury that would probably accelerate the avascular necrosis. Dr. Kruckemyer testified, in part:

Q. (Ms. Fisher) Okay. And is it fair to say anything that is going to further impede the blood supply is going to accelerate the process? What would accelerate the process?

A. (Dr. Kruckemyer) Probably most likely would be more trauma to the area. Anything that impedes the blood supply might enlarge the area of avascular necrosis, but I think any injury would probably accelerate the process.

. . . .

Q. We already have an area that is developing the process, it is very predisposed to further injury, and so when she flips that ankle over, does it make sense that that additional trauma is going to add to the process?

A. She probably had the avascular necrosis, which could have been relatively asymptomatic, but that injury could have initiated the collapse.<sup>1</sup>

Dr. Sloo initially testified rolling the left ankle could accelerate avascular necrosis in the left talus and that he agreed with Dr. Kruckemyer's opinion that any injury would probably accelerate the process.<sup>2</sup> Later, Dr. Sloo clarified that he believed there needed to be additional fracture to affect preexisting avascular necrosis.<sup>3</sup>

The other two doctors who testified in this claim, Dr. Edward J. Prostic and Dr. Philip R. Mills, were split in their opinions. According to Dr. Prostic, who is a board-certified orthopedic surgeon, the May 2000 accident was medically competent to cause a compression fracture of the area previously weakened by avascular necrosis. Consequently, Dr. Prostic concluded the May 2000 accident accelerated the avascular

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<sup>1</sup> Kruckemyer Depo. at 28-29.

<sup>2</sup> Sloo Depo. at 16-17.

<sup>3</sup> *Id.* at 20.

necrosis process in claimant's left ankle.<sup>4</sup> On the other hand, Dr. Mills, who is board-certified in physical medicine and rehabilitation, testified the May 2000 accident may have aggravated or accelerated the avascular necrosis but he was unable to state that within a reasonable degree of medical probability.<sup>5</sup>

Claimant's testimony regarding the ongoing symptoms that she experienced following the May 30, 2000 accident, coupled with the medical experts' testimonies, persuades the Board that the May 2000 accident permanently aggravated, accelerated and intensified the avascular necrosis in claimant's left foot.

Likewise, the Board affirms the Judge's conclusion that claimant sustained personal injury by accident arising out of and in the course of her employment in the May 30, 2000 accident.

Finally, the Board adopts the Judge's findings and conclusions that the May 30, 2000 accident also directly caused complaints in claimant's low back and right knee. Accordingly, claimant has sustained an injury that is not contained in the scheduled injury statute, K.S.A. 1999 Supp. 44-510d, and, therefore, claimant is entitled to receive permanent partial general disability benefits as provided by K.S.A. 1999 Supp. 44-510e. As determined by the Judge, claimant is entitled to receive permanent partial general disability benefits as follows:

For the period from January 1, 2003, to February 1, 2003, a 77 percent work disability, which represents a 100 percent wage loss averaged with a 54 percent task loss;

for the period from February 1, 2003, to May 24, 2003, a 63 percent work disability, which represents a 72 percent wage loss averaged with claimant's 54 percent task loss;

for the period from May 24, 2003, to June 15, 2003, a 77 percent work disability, which represents a 100 percent wage loss averaged with the 54 percent task loss; and

for the period commencing June 15, 2003, a 39.5 percent work disability, which represents a 25 percent wage loss averaged with the 54 percent task loss.

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<sup>4</sup> Prostic Depo. at 10.

<sup>5</sup> Mills Depo. at 10.

**AWARD**

**WHEREFORE**, the Board affirms the December 23, 2003 Award entered by Judge Moore.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jan L. Fisher, Attorney for Claimant  
Dustin J. Denning, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director